IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1981

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No. 82-5348

WARDELL RILEY,

Petitioner,

vs.

THE STATE OF FLORIDA,

Respondent.

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SUPREME COURT, U.S.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF FLORIDA

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QUESTION PRESENTED FOR REVIEW

WHETHER A STATE APPELLATE COURT, IN UPHOLDING DEATH SENTENCING FINDINGS OF A TRIAL COURT DESPITE EVIDENCE THAT THE TRIAL COURT FAILED TO CONSIDER AS A MATTER OF LAW EVIDENCE OF NON-STATUTORY MITIGATING FACTORS, VIOLATES THE RELIABILITY AND INDIVIDUALIZATION REQUISITES OF THE EIGHTH AMENDMENT.

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THE STATE OF FLORIDA,

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PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF FLORIDA

Petitioner, Wardell Riley, respectfully prays that a Writ of Certiorari issue to review the judgment and opinion of the Supreme Court of Florida in this cause, rendered on June 7, 1982.

OPINION BELOW

The opinion of the Supreme Court of Florida is reported at 413 So.2d 1173. The full opinion is included in the appendix to this petition at pages 1-3.

JURISDICTION

The jurisdiction of this Court is invoked under 28 U.S.C. §1257(3), to review the judgment and opinion of the Supreme Court of Florida, issued on April 1, 1982 and rendered upon the denial of a timely motion for rehearing on June 7, 1982. On July 26, 1982, Mr. Justice Powell issued an order extending the time for filing this petition to September 5, 1982.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

AMEND. VIII, U.S. CONST.

> Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

AMEND. XIV. §1, U.S. CONST.

. . . nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

§921.141, Fla. Stat (1975)

(3) FINDINGS IN SUPPORT OF SENTENCE OF DEATH. - Notwithstanding the recommendation of a majority of the jury, the court, after weighing the aggravating and mitigating circumstances shall enter a sentence of life imprisonment or death, but if the court imposes a sentence of death, it shall set forth in writing its findings upon which the sentence of death is based as to the facts:

(a) That sufficient aggravating circumstances exist as enumerated in subsection [5], and

(b) That there are insufficient mitigating circumstances, as enumerated in subsection [6], to outweigh the aggravating circumstances.

In each case in which the court imposes the death sentence, the determination of the court shall be supported by specific written findings of fact based upon the circumstances in subsections [5] and [6] and upon the records of the trial and the sentencing proceedings. If the court does not make the findings requiring the death sentence, the court shall impose sentence of life imprisonment in accordance with s. 775.082.

* * *

(6) MITIGATING CIRCUMSTANCES. - Mitigating circumstances shall be the following:

(a) The defendant has no significant history of prior criminal activity.

(b) The capital felony was committed while the defendant was under the influence of extreme mental or emotional disturbance.

(c) The victim was a participant in the defendant's conduct or consented to the act.

(d) The defendant was an accomplice in the capital felony committed by another person and his participation was relatively minor.

(e) The defendant acted under extreme duress or under the substantial domination of another person.

(f) The capacity of the defendant to appreciate the criminality of his conduct or to conform his conduct to the requirements of law was substantially impaired.

(g) The age of the defendant at the time of the crime.

STATEMENT OF THE CASE

For his participation in two felony-murders occurring during a robbery, petitioner's trial jury recommended a sentence of life for one homicide offense and a sentence of death for the other offense. (A. 2). The trial judge adhered to the jury recommendation and imposed one death sentence, finding six factors in aggravation and one factor in mitigation. (A. 2, 16-18).

On direct appeal in the Supreme Court of Florida, that court vacated the death sentence and remanded the cause for resentencing by the trial judge, with one justice dissenting on the basis that the evidence was insufficient as a matter of law to sustain the convictions. Riley v. State, 366 So.2d 19 (Fla. 1978); (A. 2). The majority concluded that four of the six findings in aggravation which had been relied upon by the trial judge in imposing the death sentence had been improper; since there was at least one mitigating circumstance present, reconsideration of the sentence by the trial judge was deemed required. (A. 2).

At the resentencing proceeding held on April 19, 1979, six witnesses testified in mitigation of sentence and one witness testified in aggravation of sentence. (A. 25-53). With regard to mitigation, an anthropologist who had established a relationship with petitioner during a two year study of the state prison system testified as to petitioner's contribution to prison society and certain educational, religious, and family factors which established a likelihood that petitioner would be a constructive member of society if released, and five members of petitioner's family testified regarding petitioner's family, religious and employment background. (A. 25-51). At the conclusion of the testimony, the prosecutor and defense attorney presented argument. (A. 53-61). The prosecutor argued, inter alia, "We have two aggravating circumstances. One mitigating factor that the Supreme Court told the Court it could consider." (A. 55).

Thereafter, the trial judge imposed a sentence of death, finding the two statutory aggravating factors previously approved by the Supreme Court of Florida, and the one statutory mitigating factor previously approved by the appellate court. (A. 12-14, 64). The sentencing order of the trial court provides in pertinent part:

> After having considered all the testimony, evidence and arguments which have been presented, and having considered the provisions of Section 921.141, Florida Statutes, and having considered the opinion of the Supreme Court, the court, independent of, but in agreement with the advisory sentence of the jury does hereby impose the death penalty upon the defendant, Wardell Riley.

(A. 12). With regard to mitigation, the trial court found as follows:

> As to the mitigating circumstances:
>
> 1. The defendant has no significant history of prior criminal activity. (Section 921.141(6)(a) Florida Statutes).
>
> There are no other mitigating circumstances.

(A. 13).

On direct appeal from the death resentencing, petitioner contended, in pertinent part, that the trial court had erroneously failed to consider evidence in mitigation where it was outside the confines of the statutory mitigating factors prescribed in Section 921.141(6), Florida Statutes (1975), thereby violating the Eighth and Fourteenth Amendments to the Constitution of the United States. (A.93-100). In briefing this claim, petitioner explicated:

> It must be emphasized that the defendant is not claiming that, as a matter of law, the trial court was obliged to give overriding weight to the non-statutory mitigating evidence . . . . Rather, it is the failure to weigh at all this mitigating evidence which forms the gravamen of the defendant's claim. For ultimately, the unduly restrictive view of the evidence which could be considered ensured that an individualized and reliable sentencing resolution would not be achieved.

(A.100).

The Supreme Court of Florida, in rejecting petitioner's claim, with one justice dissenting, held as follows:

> We reject Riley's contention that the trial judge failed to consider certain evidence introduced by Riley during the resentencing proceeding to demonstrate nonstatutory mitigating factors. The trial judge expressly stated that he considered all the testimony and evidence presented. Furthermore, there is no indication from the record that he limited his consideration of mitigating factors to only those which are statutorily enumerated. Because he failed to find the mitigating factors which Riley urged does not mean that he did not consider the evidence. It lies within his province to decide whether a particular mitigating circumstance in sentencing is proven and the weight to be given it. Smith v. State, 407 So.2d 894 (Fla. 1981). Lucas v. State, 376 So.2d 1149 (Fla. 1979). Here, we find no error in his decision.

(A. 3).

On motion for rehearing, petitioner pointed out that Florida law requires a trial court, in imposing a sentence of death, to specify in writing the factors weighed in aggravation and mitigation, and that the sentencing findings of the trial court in this case reflect that only the evidence of a statutory mitigating factor was considered; as a result, petitioner contended his sentence was in contravention of the mandate of Eddings v. Oklahoma, ___ U.S. ___, 102 S.Ct. 869 (1982). (A. 6-7). This motion was denied on June 7, 1982. (A. 11).

REASONS FOR GRANTING THE WRIT

> THE SPECULATION IN WHICH THE SUPREME COURT OF FLORIDA ENGAGED IN HOLDING THAT THE TRIAL COURT HAD CONSIDERED NON-STATUTORY MITIGATING EVIDENCE PRESENTED AT THE SENTENCING PROCEEDING BUT OMITTED FROM THE SENTENCING FINDINGS OF THE LOWER COURT VIOLATES THE MANDATE OF EDDINGS V. OKLAHOMA, U.S. , 102 S.Ct. 869 (1982), AND RAISES SERIOUS AND CONTINUING CONSTITUTIONAL QUESTIONS REGARDING THE PROPER SCOPE OF STATE APPELLATE REVIEW IN CAPITAL CASES.

This Court has made clear that meaningful appellate review of the decision to impose the sentence of death is a vital component of a constitutional state capital punishment system.

Godfrey v. Georgia, 446 U.S. 420, 100 S.Ct. 1759, 1765 (1980); Gardner v. Florida, 430 U.S. 349, 361 (1977); Proffitt v. Florida, 428 U.S. 242, 258-60 (1976); Woodson v. North Carolina, 428 U.S. 280, 303 (1976). Consistent with this basic precept, Florida law imposes an obligation upon the sentencing judge to articulate with specific findings of fact the evidence in aggravation and in mitigation considered or rejected in reaching the weighing judgment that death is the appropriate sentence. Proffitt v. Florida, supra at 251; Magill v. State, 386 So.2d 1188, 1191 (Fla. 1980); State v. Dixon, 283 So.2d 1, 8 (Fla. 1973); Section 921.141(3), Florida Statutes (1975). These sentencing findings, required by Florida law to be reduced to writing, can then be meaningfully examined by the state supreme court to ensure that sentencing evidence is properly considered in accordance with the appropriate standards of state and federal law. Ibid.

In the case at bar, it is undeniable that the sentencing findings of the trial court regarding the mitigating factors considered in the weighing process were identical in the original sentencing and the resentencing proceedings; one statutory mitigating factor was considered, petitioner's lack of a prior criminal history. (A. 12-14, 16-18).[1] Yet, it is equally undeniable that petitioner presented extensive evidence of non-statutory mitigating factors at the resentencing hearing which

---

1 In the original sentencing findings, the trial court explained:

> I have searched in vain for sufficient mitigating circumstances under the law which would justify a sentence other than the death penalty in this case.
>
> * * *
>
> The only mitigating circumstances under Florida Statute is the fact that the Defendant had no prior criminal conviction.

(A. 16).

In the resentencing findings, the trial court again found:

> As to mitigating circumstances:
>
> 1. The Defendant has no significant history of prior criminal activity. (Section 921.141(6)(a) Florida Statutes).
>
> There are no other mitigating circumstances.

(A.13).

was in no way mentioned in the final sentencing order of the trial court.[2] Given the state requirement of detailed sentencing findings, the possibility that the trial court deemed itself constrained by Florida law to consider only mitigating evidence which fell within the parameters of the statutorily-enumerated factors is accordingly strongly supported by this record.[3]

---

2 This case is distinguishable from the situation where a defendant merely disagrees with the weight to be accorded specific sentencing findings. Admittedly, disagreement with the force to be given evidence is not a basis under current Florida law for challenging a death sentence.

Thus, by way of contrast, in the decision of Quince v. State, 414 So.2d 185 (Fla. 1982), the Supreme Court of Florida appropriately rejected the defendant's contention that the trial judge had given insufficient weight to the mitigating circumstance of mental impairment, emphasizing:

> The trial judge demonstrated in his sentencing order his close consideration of this very factor. Nor is this a case in which the trial judge considered matters he should not have.
>
> Rather, this is a case in which the appellant disagrees with the weight that the trial judge accorded the mitigating factor. But mere disagreement with the force to be given such evidence is an insufficient basis for challenging a sentence.

Id. at 187. (original emphasis and citation omitted); see also Magill v. State, 386 So.2d 1188, 1191 (Fla. 1980).

3 In the original sentencing findings, the trial judge stated, "I have searched in vain for sufficient mitigating circumstances under the law which would justify a sentence other than the death penalty in this case." (A. 16). In finding one statutory mitigating circumstance apposite to petitioner, the trial judge explained, "The only mitigating circumstance under Florida Statute is the fact that the Defendant had no prior criminal conviction." (A. 16).

In the decision on direct appeal, the Supreme Court of Florida noted:

> Appellant's principal argument to us is that a death sentence is not warranted for his crime, . . . and second because the statutory mitigating circumstances outweigh in significance the statutory aggravating factors.
>
> * * *
>
> The one mitigating factor found to exist in this case was appellant's lack of any significant history of prior criminal activity. All other mitigating factors in Section 921.141(6) were properly found to be absent.

Riley v. State, 366 So.2d 19, 21 (Fla. 1978).

At the resentencing proceeding, the prosecutor contended that the opinion of the Supreme Court of Florida set forth the one

Nevertheless, the state supreme court, without foundation, rejected petitioner's claim in this regard, holding:

> [T]here is no indication from the record that he limited his consideration of mitigating factors to only those which are statutorily enumerated. Because he failed to find the mitigating factors which Riley urged does not mean that he did not consider the evidence.

(A. (3).[4]

---

3 (continued)
mitigating factor which the trial court could consider:

> We have two aggravating circumstances. One mitigating factor that the Supreme Court told the Court it could consider.

(A. 55)

And in the final order in support of petitioner's death sentence, the trial judge made the following findings in mitigation:

> As to the mitigating circumstances:
> 1. The Defendant has no significant history of prior criminal activity. (Section 921.141 (6)(a) Florida Statutes).
> There are no other mitigating circumstances.

(A. 13).

4
This conclusion of the appellate court is particularly surprising in light of the court's recognition, subsequent to petitioner's sentencing and resentencing proceedings, of a prior misconstruction of Florida law as delimiting the factors in mitigation to those delineated in the statute:

> The trial judge followed the law as he believed it was being interpreted at the time of trial. The United States Supreme Court in Lockett v. Ohio, 438 U.S. 586, 98 S.Ct. 2954, 57 L.Ed. 2d 973 (1978), subsequently held that a defendant may not be precluded from offering as a mitigating factor any aspect of his character and record or any evidence concerning the circumstances of the offense which might justify a reduction of a death sentence to life imprisonment. In Songer v. State, 365 So.2d 696 (Fla. 1978), cert. denied, 441 U.S. 956, 99 S.Ct. 2185, 60 L.Ed.2d 1060 (1979), we clarified the apparent misconstruction of Cooper v. State, expressing the view that our statute allowed any relevant mitigating evidence, and we explained that our decision in Cooper was never intended to limit consideration of mitigating circumstances to the named statutory factors.

Perry v. State, 395 So.2d 170, 174 (Fla. 1980).

Indeed, Justice Rehnquist, in his dissenting opinion in Lockett v. Ohio, pointed out that the plurality of this Court, in upholding the Florida capital sentencing scheme, had originally deemed the Florida statute to be similarly circumscribed:

> "The sentencing authority in Florida, the trial judge is directed to weigh eight aggravating factors against seven

It is this speculation by the state appellate court, and its refusal to seek clarification from the trial judge of his sentencing findings, which call into question the reliability of the state capital sentencing review system in this case. Indeed, it is this deviation from the clear dictates of Florida law, this review on the basis of conjecture outside the record, that posits the critical question of not merely the proper, but the constitutionally required, scope of appellate review in the capital case.

It is no longer open to question but that the sentencing arbiter must be free to give independent mitigating weight to all aspects of the defendant's character, record, and offense proffered in support of a sentence of life. Eddings v. Oklahoma, ___ U.S. ___, 102 S.Ct. 869, 874 (1982); Lockett v. Ohio, 438 U.S. 586, 604-5 (1978). Yet, it is certainly an open question whether the trial judge in this case was aware that relevant mitigation is no longer confined to the statutory delineations. The ambiguity in the death sentencing findings of the trial judge is such as to command a remand of the cause for clarification by the lower court.

> Because sentences of death are "qualitatively different" from prison sentences, this Court has gone to extraordinary measures to ensure that the prisoner sentenced to be executed is afforded process that will guarantee, as much as humanly possible, that the sentence was not imposed out of whim, passion, prejudice, or mistake.
>
> * * *
>
> Woodson and Lockett require us to remove any legitimate basis for finding ambiguity concerning the factors actually considered by the trial court.

Eddings v. Oklahoma, ___ U.S. ___, 102 S.Ct. 869, 878 (1982).

---

4 (continued)

> mitigating factors to determine whether the death penalty shall be imposed."

Lockett v. Ohio, 438 U.S. 586, 98 S.Ct. 2954, 2974 (1978), quoting Proffitt v. Florida, 428 U.S. 242, 251 (1976)

(O'Connor, J., concurring) (citations omitted).

In the final analysis, the ambiguity in this record must be resolved not by speculation by the appellate court, but by explanation by the sentencing court. The practice by which an appellate court concludes no error without substantiation in the record is onerous in any case; but it is intolerable in the capital case where a reliable determination that an individualized sentencing judgment of death has been reached is a constitutional imperative.

As this Court admonished in assessing the propriety of another aspect of the Florida capital appeal structure:

> Since the State must administer its capital sentencing procedure with an even hand, see Proffitt v. Florida, 428 U.S., at 250-253, 96 S.Ct., at 2966-2967, it is important that the record on appeal disclose to the reviewing court the considerations which motivated the death sentence in every case in which it is imposed. Without full disclosure of the basis for the death sentence, the Florida capital-sentencing procedure would be subject to the defects which resulted in the holding of unconstitutionality in Furman v. Georgia.

Gardner v. Florida, 430 U.S. 349, 361 (1977) (footnote omitted).

CONCLUSION

Based upon the foregoing, petitioner respectfully requests this Court to issue its Writ of Certiorari to review the decision of the Supreme Court of Florida in this cause.

Respectfully submitted,

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That's just one incident, but I have come across other instances where I am absolutely convinced beyond any doubt that Mr. Riley has a very strong inner sense of social obligation and is able to relate in a social way to people with whom he disagrees.

He knows inmates there that he disagrees with, a rather violent group of inmates, and we have had discussions about this, and I see that ability to order that disagreement. I would see him as I say being a potential constructive member of society.

MR. MORRIS: Thank you very much, Mr. Turnbull for your testimony.

I extended a general invitation, Your Honor, to the members of Mr. Riley's family, and I stated at that time that we would have the hearing this afternoon at 1:00 o'clock if any of them wished to testify regarding Mr. Riley's character that they could come forward and do so. May I extend that invitation at this time?

THE COURT: Yes.

Will the members of the family who would like to say something on behalf of Mr. Riley step forward and we will take your testimony one at a time.

DIRECT EXAMINATION

BY MR. MORRIS:

Q Would you please state your name?